

**Testimony of Congressman William Delahunt**

**Before the**

**Subcommittee on Courts, the Internet and Intellectual Property  
Committee on the Judiciary  
U.S. House of Representatives**

**Hearing On**

**Design Law – Are Special Provisions Needed to Protect Unique Industries**

**February 14, 2008**

Chairman Berman, Ranking Member Coble, Members of the Subcommittee – thank you for holding this hearing today and for inviting me to testify in support of H.R. 2033, the Design Piracy Prohibition Act, introduced by Congressman Goodlatte and myself.

Yesterday, Congress and the President enacted into law a significant piece of legislation - the economic stimulus package. Notwithstanding some disagreement over what constitutes an effective stimulus, this legislation represents a consensus – a consensus that our nation’s economy is in trouble and that Congress has a vital role in stemming the tide. In this effort, we must take seriously the protection and promotion of America’s competitiveness, both in its traditional and emerging industries. To this end, it is critical that we lend our attention, and promptly, I would argue, to strengthening our nation’s intellectual property laws to protect some of the most important emerging innovators in America today – fashion designers.

The Chamber of Commerce, in its recent report, “Economic Analysis of the Proposed CACP Anti-Counterfeiting and Piracy Initiative”, reminds us that “the health of the US economy depends on a wide range of industries that rely on intellectual property to create and produce state-of-the-art products, and how . . . counterfeiting and piracy, therefore, serve to undermine the long-run competitiveness of the US economy”. According to the Chamber, counterfeiting and piracy cost U.S. businesses \$225 billion in revenue each year; of that, fashion and apparel piracy and counterfeiting account for a minimum of \$12 billion.

We have laws against counterfeiting apparel and footwear brands and pirating fabric designs; however, within these laws, a glaring hole exists which is putting at risk the very innovation we seek to encourage: we must enact laws against pirating fashion designs, which after all, is counterfeiting without the label.

America has become the world leader in fashion design. This is not just an LA / NY phenomena, it's happening across America.

Fashion design businesses are proliferating and growing. As they grow, so do the manufacturing, transportation, marketing, and publishing industries that support fashion design. This is not even including the television shows, cable networks, and internet sites devoted entirely to fashion, and most importantly, the innovations and creative works of American designers. I have even read that it's even reviving real estate values in areas where garment manufacturing businesses lost their jobs to Asian competitors.

In my home state of Massachusetts, the Massachusetts College of Art and Design (MassArt) is now offering a bachelor's degree in Fashion Design to 4-year students. Some of these students have even gone on to win scholarships and recognition from the Council of Fashion Designers of America's merit-based Scholarship Program. Massachusetts' schools are not alone in recognizing the countless numbers of American students who strive to pursue fashion design as an academic and professional career.

But of course—as we know from experience in other important areas of American intellectual property – when we lead the world in a creative industry, it soon will become the world's leading counterfeit and piracy victim.

FBI, Justice and Commerce Departments report that China is growing an industry based on copying and exporting American fashion designs. This job drain is fostered by the speed with which a 3D picture can be sent across the globe to machines that can take a picture and perfectly copy the pattern, the DNA of the design.

Sadly, the growth of the Chinese fashion piracy industry is also spurred by our lack of laws against it. It's legal!

I read in the Wall Street Journal that in China, one city is devoted to making socks, another - kids' clothes, etc. We need to make sure we don't

wake-up to find a Garment Knock-off City! They can create infrastructure in minutes.

We are in tough economic times, as we were reminded during the holidays. Retail is a closely-watched barometer of the country's economic health. This January was the worst January for retail sales since 1969 (the year the International Council of Shopping Centers started keeping track of such). Though, as *Women's Wear Daily* reports, retailers are looking to designers to create unique and exciting designs to bring them out of the slump or otherwise improve their numbers, as they have in the past.

So we really must ask ourselves: here we are with a real and proven growth opportunity for new jobs in America, new exports—all based on the kind of intellectual property that has always advantaged our balance of trade. Why aren't we protecting it in the same way we protect and promote our other creative industries that are so important to our economy?

Europe, Japan and India have protection for 15-25 years for registered designs and we have nothing. Clearly, it has fueled their success; one doesn't have to be a fashion expert to know that the European fashion industries are robust industries that play important roles in their economies.

And in Europe (where in some countries they've had protection for over 100 years), their 15-25 year copyright protection for registered designs has spurred negligible litigation. According to the EU, out of some 308 appeal cases concerning infringements of protected Designs in 2005, only 10 out of 308 related to registered designs in the fashion category.

The U.S. fashion industry is vibrant, but it is young. We cannot just stand by and watch yet another industry migrate out of the U.S. We need to pass H.R. 2033 to prevent others from growing an industry that Americans create.

As this committee proceeds to beef up the enforcement of our counterfeiting regimes, we should take the time to plug this loophole in our anti-counterfeiting regime.

As reported in the media, law enforcement is being thwarted in its apparel anti-counterfeiting efforts because the pirates are taking clever advantage of the fact that we don't have laws against design piracy. To circumvent crackdowns on smuggling by customs, counterfeiters have taken to openly

and legally importing goods with pirated designs – “blanks” – only to put on the label that makes a blank an official counterfeit either at the point of sale or in clandestine operations here in the U.S.

Last April, a storage unit raid in Massachusetts netted nearly 20,000 counterfeit handbags and wallets, plus more than 17,000 generic handbags and wallets, and enough counterfeit labels and medallions to convert more than 50,000 generic handbags and wallets into counterfeits. Clearly, storage units are not easy to find. Harder yet (or impossible) would be having an FBI agent at each sale. This bill proposes an easier way to prohibit design piracy and thwart counterfeiting.

I'd like to quickly highlight another aspect of counterfeiting that is less discussed but deserves serious attention, and that is its link to organized crime and terrorism. Newsweek contributor Dana Thomas succinctly summed up the issue in an August, 2007 New York Times Op-Ed; “Most people think that buying an imitation handbag or wallet is harmless, a victimless crime. But the counterfeiting rackets are run by crime syndicates that also deal in narcotics, weapons, child prostitution, human trafficking and terrorism. Ronald K. Noble, the secretary general of Interpol, told the House of Representatives Committee on International Relations that profits from the sale of counterfeit goods have gone to groups associated with Hezbollah, the Shiite terrorist group, paramilitary organizations in Northern Ireland and FARC, the Revolutionary Armed Forces of Colombia.”

This bill introduced by myself and Congressman Goodlatte and several colleagues on the Committee, provides a framework for more comprehensive and seamless intellectual property enforcement. It would provide three years of copyright protection for fashion designs – not those that staple, standard or prevalent, but rather only those designs that truly unique. The protective time period is a fraction of that provided by other nations, but would serve as an important first step toward putting our young designers on equal footing with those abroad.

I am aware that there have been fruitful negotiations with those who want to improve the bill, and I would hope, Mr. Chairman, that we can soon sit down to connect the ideas that have been proffered. However, I also believe that we must move expeditiously toward providing America's artists and entrepreneurs with the tools they need to build their future and, in turn, America.